

# Recap

- **Definition of research** – Systematic continuous inquiry into seeking facts, based on logical reasoning, generates new questions, disproves lies, tests theories, contributes to existing knowledge
- **Methodology** – technique/ strategy on how to conduct research – the initial approach to research. An explanation and justification for using certain research methods and of the methods themselves
- **Advantages of Methodology** – research is more efficient, gives an element of objectivity to the research
- **Research methods** - techniques/ tools used in conducting the search and collecting data. 10 methods:-
  1. Basic/ Fundamental vs Applied (answers specific questions)
  2. Descriptive (reports what has happened/ what is happening. No opinion. Answers Qs: . How much/ how many/ how regularly/ what percentage/ what time?) vs Analytical (critical evaluation of facts, draws conclusions. Method used for legal writing)
  3. Qualitative (subjective, non-numerical data, generates new ideas for research) vs Quantitative (objective, focus on numbers)
  4. Correlational (see relationships between variables) vs Experimental (cause and effect)
  5. Empirical (based on experience, observation and testing) vs Conceptual (analyze current information and come up with a theory/ idea/concept)



# Recap

- What is **legal research** - *systematic finding or ascertainment of law on an identified topic or in a given area as well as an inquiry into law with a view of making advancement in the science of law.*
- The finding of particular laws in a cast mass of statutes which are constantly amended, introduced and replead to the facts of your case. It also involves the finding of legal principles which do not emanate from law but emanate from out sources e.g. judgments
- **Legal enquiries** will be: Why a particular rule? What led to its adoption? What are its effects? Whether it is suited to the present conditions? How can it be improved? Whether it needs to be replaced entirely by a new rule?
- Purposes of legal research – introductions and reforms e.g. decriminalization of slanderous words in social media and cannabis



# Recap

- **Purpose** of Legal Research:-
  1. **Ascertain the Law** – locating, know what the law says – ignorance of the law not an excuse
  2. **Highlight gaps and ambiguities**
  3. **Determine coherence, stability and consistency** – damages concept – Butler vs Heard
  4. **Social auditing** – identify gaps between legal ideal and society e.g. Cap. 69 The Reletting of Urban Property (Regulation) Ordinance – pre-1995 rent laws



# Legal Research and Interpretation Methodology

**Lecture Title: Legal Research - Sources**

**Lecturer: Dr Elian Scicluna**

**Date: 15/01/2025**



**Diploma in Law (Malta)**

# Historical background of Legal Research

- **The History of Law, Order & Justice! : Hidden Histories Video**

<https://www.youtube.com/watch?v=OxOZ7KUC1yk>

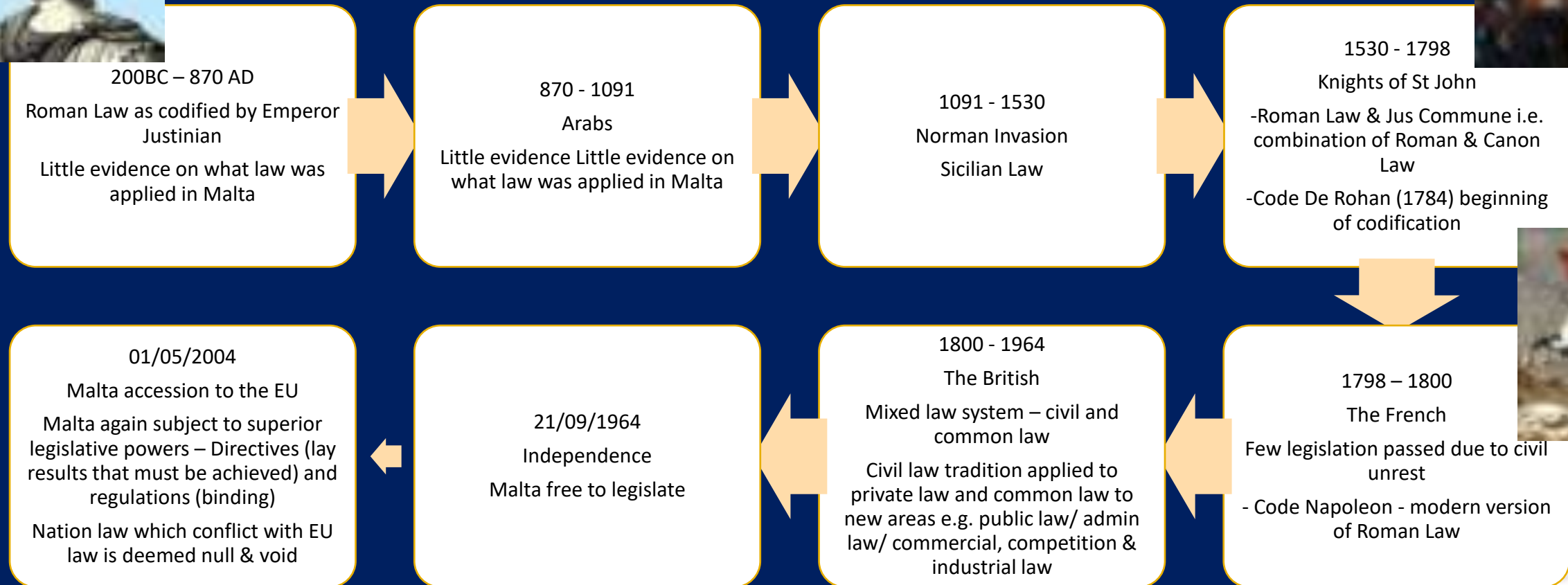
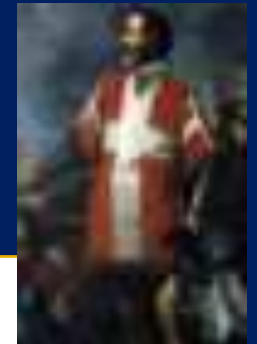


# Historical background of Legal Research

- First attempt to codify common law can be traced back to Blackstone's era in 1765 with the publication of Commentaries on the Laws of England
- Modern research as we know it goes back to the introduction of the printing press technology in 1850s. Legal material started to be published leading to the creation of volume management problems
- Maltese publications are accessible from the National Library in Valletta
- Accessibility and increase in the volume of legal material hit with online databases. Information is easily accessible and more accurate and reliable



# The Maltese Legal System





## Skills in conducting legal research

Why do we need  
skills?  
Which are they?





# Legal Research Skills

- Establish the legal issue – narrow the field? E.g Rent laws -> pre-1995
- Reduce, break, separate the law into different elements

E.g. Arbitrary exercise of pretended rights – Art. 85 of Cap. 9

*85.(1) Whosoever, without intent to steal or to cause any wrongful damage, but only in the exercise of a pretended right, shall, of his own authority, compel another person to pay a debt, or to fulfil any obligation whatsoever, or shall disturb the possession of anything enjoyed by another person, or demolish buildings, or divert or take possession of any water-course, or in any other manner unlawfully interfere with the property of another person, shall, on conviction, be liable to imprisonment for a term from one to three months*

*85.(1) Kull min, bla hsieb li jisraq jew li jagħmel ħsara kontra l-liġi, iżda biss biex jeżerċita jedd li jippretendi li għandu, iġieghel, bl-awtorità tiegħu nnifsu, lil xi hadd iħallas dejn, jew jeseġwixxi obligazzjoni, tkun li tkun, jew ifixkel lil xi hadd fil-pussess ta' ħwejjġu, jew iħott bini, jew jikser il-mixi tal-ilma jew jieħu l-ilma għalih, jew b'xi mod ieħor, kontra l-liġi, jindaħal fi ħwejjġeġ haddieħor, jeħel, meta jinsab hati, il-piena ta' prigunerija minn xahar sa tliet xhur:*

The elements of this offence are when a person is deprived from the use of something and when the accused acted because he has a right to act in this way.

The accused must be aware that he should have taken a legal route.

There must be an act which deprives the possession of the object of the crime.



# Legal Research Skills

- Use correct terminology/ different terminology e.g. rent/ lease - kera/ kirja/ lokazzjoni - contract/private writing/public deed – promise of sale agreement/konvenju/conveyancing agreement
- Gather information about the legal issue – primary, secondary, tertiary sources
- Use latest law – go through amendments
- Filter through case law – check for conflicting judgments
- Locate authorities
- Check multiple sources
- Discuss with senior colleagues if needed
- Cite
- Don't lose hope!



Are the qualities of a legal researcher exhaustive?

Video:

Abhayraj Naik

Lecturer at Azim Premji  
University in India

<https://www.youtube.com/watch?v=ISxRKddaXSM>



# Why does one need to possess the skills to conduct proper legal research? Example

- Jill and Jane are twin law students who are undertaking their first research assignment. For their first assignment they are given the following question:-

*Select one case of your choice from the High Court, write a case note on the decision. In your case note explain the facts, identify the legal issues, explain the outcome and explain if and how the case changed the law*



# Jill's Approach

- Jill reads through the question several times so she is very clear on what she has to do.
- She attends the lecture where her lecturer explains how it is important for this topic to search beyond the case. Students will need to use journal articles that can help them understand the case and see if and how it has changed the law.
- Jill understands that researching for the assignment is only one aspect of the overall task. She plans to include enough time to research, write and proofread before submitting the assignment before the due date.



# Jill's Approach – Web Search

- Jill starts her research with a quick Google search and chooses the keywords 'famous high court case Australia'.
- Jill clicks the second link “Top 10 Most Influential Court Cases of the Last 40 Years”. She notes that the page was created by The College of Law, which may be ok as an initial source, was published in 2014 so it won't have any more recent cases unless it is updated.
- Jill decides to choose an older case since there might be more published information on the case. Reading through the list of cases Jill is interested in the cases of Dietrich v The Queen from 1992. She quickly looks through the summary of the legal issues and she thinks the right to a fair trial will be interesting to research.
- Jill then types 'Dietrich v The queen' in Google reads a Wikipedia entry which gives her the citation and a quick overview of what the case was about.



# Jill's Approach (Searching for Case Law in FirstPoint)

- Jill then wants to check out a more detailed legal summary of the case to understand the legal issues. Jill remembers the Library workshop that she did early in the semester, Jill knows she can get some easy-to-read case summaries through FirstPoint (online caselaw research tool that provides citations, summaries and links to similar cases).
- From FirstPoint, Jill can read the summary of the case, she can also download the full-text case as a PDF. The PDF document is an official version
- Jill wants to know if this case is still good law. She goes to the bottom of the FirstPoint entry and sees that some cases that have been handed down since her case have been distinguished, some cases have also been applied and considered very recently. Jill makes her own conclusion about the case based on the evidence FirstPoint has given her.



# Jill's Approach – Journals and Library Search

- Jill notes that she will have to go beyond just finding the case and will need to find out more about the right to a fair trial. Jill selects 4 journal articles: [A Constitutional Right to a Fair Trial? Implications for the Report of the Australian Criminal Justice System, Dietrich, the High Court and Unfair Trials](#) and [Difficulty in Obtaining a Fair Trial in Terrorism Cases](#). All of them have quick summaries at the top so Jill can scan through them easily, they are written by experts and the citation details at the top of the articles make them easy to cite.
- Jill realises that she may need more resources for her assignment so she searches *Library Search* from the Library home page. She types in the keywords: 'right fair trial australia'.
- Jill finds several more articles on the topic of a fair trial. They are [The Dietrich Dilemma, Legal Aid and Access to Legal Representation: Redefining the Right to a Fair Trial](#) and [The Truth Can Cost Too Much: The Principles of a Fair Trial](#). She chooses these articles as they are about the Dietrich case and they have been recently published in journals. These are useful articles for Jill as they help her analyse what the case was about, provide her with context, and explain the main legal issues.





# Jill's Approach – Writing

- Now Jill has a good collection of resources, she can now start writing. Jill reads through the material and makes notes of the case, and on the secondary sources, she has found.
- She summarised the information in her own words and starts grouping the main ideas to form paragraphs in her essay. She plans out her essay and makes sure she has covered all the topics needed for a case note
- When Jill starts to write her assignment she refers to the authorised version of the Dietrich case from the Commonwealth Law Reports, mentions the primary sources of law including the Australian Constitution and the other relevant cases. She also relies on academic-quality journal articles to help her interpretation of the legal issues. Jill doesn't rely on the information from her initial Google or Wikipedia search, she now has better resources to choose from.



# Jill's Approach – Final Result

- Jill gets her mark back a couple of weeks later. She got an A! The comments on her essay indicate that she got excellent marks due to her quality research, her selection of resources, and the academic quality of her work.
  - Take away:
  - Have a plan
  - Start with some easy search
    - READ THE LAW
  - Build up to academic quality material



# Jane's Approach

- Jane reads through the assignment once and is really confused.
- She is not quite sure where to start but hears from another student that they are going to look at the He Kaw Teh case. Jane decides that she will do this too. She assumes that she has to talk about the main issue in the case.



# Jane's Approach – Web Search

- Jane starts her search by typing the case name in Google and gets to the Wikipedia page He Kaw Teh v The Queen. She decides that this information summarises the case enough for her and decided to copy and paste the information into her essay and cite Wikipedia as the source. Jane still isn't quite sure about what is the main point of the case, but decides to get some information on drug trafficking in Australia as this seems to be the main issue.
- Jane does a Google Search by typing in 'what's the deal with drugs in Australia?'.
  - She finds some web pages including information on What It's Like to Deal Drugs in Australia's Capital City, she finds a page on drug use and possession in New South Wales called Lawstuff, then she finds a page called Drug Abuse from a website called HealthDirect and a page about penalties for drug supply from Armstrong Legal. It takes a while for Jane to read through all the web pages and she keeps on searching to add more resources for her assignment.
- Jane decides that she needs more information on the case so goes back and conducts a Google search using the case name. She finds a case summary of UnitStudy Guides, she can see that this information originally comes from a textbook. Jane also finds some criminal law summary notes of a site called student VIP and some cram notes that briefly mention the case. She does find a version of the case but gives up as the case is way too long to read through (120 pages) when she has to do all the research



# Jane's Approach – Writing

- Jane has spent a fair amount of time surfing the web and decides the quickest way for her to finish the assignment is to copy the best part of her resources into her assignment to form her essay.



# Jane's Approach – Final Result

- Jane receives a **fail** grade! Where did it all go wrong?



- The comments on her paper reveal to Jane that **she missed the main issue of the case**. Even though the case did involve importing heroin into Australia, the main legal issue was that of intent or 'mens rea'. Research skills are really important, but it would have helped Jane if she was clear on what she had to research in the first place.
- **Jane didn't look at the authorised case, did not search if the case is still being used in the law today.**
- Jane also lost marks because her **resources were of poor quality**, using the web for the initial stage of research is useful, however, when selecting resources to include in an academic essay Jane would have been better off looking at academic sources to support her arguments.
- The most serious problem with Jane's essay was with what she was writing, she was mostly copying and pasting from the various sources she found without quotation marks and without analysis.
- Jane should have used her own words and her own work. Just copying and pasting from other sources, with or without citation, is poor academic practice. This has also raised an issue with **plagiarism** and now Jane may have breached academic integrity





**Diploma in Law (Malta)**



# Who conducts legal research?

- Anyone who is wanting to know something about the law, how it operates and who is willing to search for it
- Legislators
- Judiciary
- Lawyers, notaries, lecturers and students, court employees, other professionals incl. accountants, auditors, govt. employees, paralegals



# Who carries out legal research? - Legislators



# Who carries out legal research? - Legislators

- Legislation in Malta is enacted by parliament
- Parliament is established by Chapter 6 the Constitution – Cap. 0
- Chapter 6 provides for the establishment of parliament, house of representatives, disqualification of members, voting, speaker and deputy, power to make laws, alteration of the constitution, procedure of house of representatives, quorums
- Article 72 of the Constitution – Mode of exercising legislative powers



Made of executive  
legislative process  
Assented to  
LPM 2023.27

72. (1) The power of Parliament to make laws shall be exercised by bills passed by the House of Representatives and assented to by the President.

(2) When a bill is presented to the President for assent, he shall without delay signify that he assents.

(3) A bill shall not become law unless it has been duly passed

#### CONSTITUTION OF MALTA

49

and assented to in accordance with this Constitution.

(4) When a law has been assented to by the President it shall without delay be published in the Gazette and shall not come into operation until it has been so published, but Parliament may postpone the coming into operation of any such law and may make laws with retrospective effect.

74. Save as otherwise provided by Parliament, every law shall be enacted in both the Maltese and English languages and, if there is any conflict between the Maltese and the English texts of any law, the Maltese text shall prevail.

Language of Law.



# Who carries out legal research? - Legislators

- In the Maltese context legislation goes through a number of parliamentary procedures:-
  1. First Reading – Presentation of a motion. A motion consists of just the title of the bill to the House. After 3 days the bill is put on the parliament agenda. Motion is put to vote without any debate
  2. Second Reading - Upon publication, the bill is again included in the agenda of the House, for its Second Reading. The bill is discussed at this stage. Usually the Minister proposing the bill will give an introductory speech. After the winding up, the motion is put to the vote by the Speaker.
  3. Committee Stage – Each clause of the bill is examined separately and in detail. Both Government and Opposition Members may propose amendments during the discussion on a particular clause. At the end of discussion a vote is taken on all said amendments and the clause as amended. When the discussion ends the Chairperson informs the House about the progress made and whether the bill was passed with or without amendments.
  4. Third Reading – Members vote in favor or against the bill. The Speaker will then be in a position to declare whether the bill has been carried through its Third Reading stage by a majority of Members present and voting, save as otherwise provided in the Constitution. This voting procedure applies to all votes taken during the previously mentioned stages of the bill.
  5. The bill is then presented to the President of Malta for his assent and published in the Government Gazette, becoming a Parliamentary Act.



Ninth Legislature (2017 - )  
Tenth Legislature (2013 - 2017)  
Eleventh Legislature (2009 - 2013)  
Twelfth Legislature (2005 - 2009)  
Thirteenth Legislature (2001 - 2005)  
Fourteenth Legislature (1997 - 2001)  
Fifteenth Legislature (1993 - 1997)  
Sixteenth Legislature (1989 - 1993)  
Seventeenth Legislature (1985 - 1989)  
Eighteenth Legislature (1981 - 1985)  
Nineteenth Legislature (1977 - 1981)

Standing Orders of the House of Representatives

Media Archive

Tags

Marriage

Equality

Legal

Legislation

# Bill No. 1

Marriage Bill and other Laws (Amendment) Bill

[View Bill](#)

Nineteenth Legislature (2017 - )

Download the Document

Debated in	1st Reading	2nd Reading	Committee	Recommitted	3rd Reading
Bill No. 001 - 29 Jun 2017 Plenary Session	●				
Bill No. 002 - 29 Jun 2017 Plenary Session		●			
Bill No. 013 - 05 Jul 2017 Plenary Session		●			
Bill No. 014 - 05 Jul 2017 Plenary Session		●			
Bill No. 021 - 08 Jul 2017 Consideration of Bill Committee			●		
Bill No. 022 - 07 Jul 2017 Consideration of Bill Committee			●		
Bill No. 023 - 10 Jul 2017 Consideration of Bill Committee			●		
Bill No. 017 - 12 Jul 2017 Plenary Session					●

## Object and Reasons

The object of the Bill is to modernize the institution of marriage and ensure that all consenting, adult couples have the legal right to enter into marriage.

[Standing Orders of the House of Representatives](#)

[Media Archive](#)

**Tags**

[Marriage](#)

[Equality](#)

[Civil](#)

[Rights](#)

Debated in	1st Reading	2nd Reading	Committee	Recommitted	3rd Reading
Sitting No. 201 - 24 Jun 2017 Private Session	●				
Sitting No. 202 - 28 Jun 2017 Private Session		●			
Sitting No. 211 - 05 Jul 2017 Private Session		●			
Sitting No. 214 - 08 Jul 2017 Private Session		●			
Sitting No. 203 - 08 Jul 2017 Consideration of Bill Committee			●		
Sitting No. 202 - 07 Jul 2017 Consideration of Bill Committee			●		
Sitting No. 201 - 10 Jul 2017 Consideration of Bill Committee			●		
Sitting No. 217 - 18 Jul 2017 Private Session					●

### Overview and Actions

The object of the Bill is to modernise the institution of marriage and ensure that all consenting, adult couples have the legal right to enter into marriage.

**Motion No. 9 - Marriage Bill and other Laws (Amendment) Bill**

**Act No. XXIII of 2017 - Marriage Act and other Laws (Amendment) Act**

[Home](#)[About Parliament](#)[Parliamentary Process](#)[Committees / Commissions](#)[Reference Material](#)[Get Involved](#)

[Fourteenth Legislature \(2017 - 2019\)](#)  
[Thirteenth Legislature \(2015 - 2017\)](#)  
[Twelfth Legislature \(2008 - 2015\)](#)  
[Eleventh Legislature \(2006 - 2008\)](#)  
[Tenth Legislature \(2003 - 2006\)](#)  
[Ninth Legislature \(1996 - 2003\)](#)  
[Eighth Legislature \(1988 - 1996\)](#)  
[Seventh Legislature \(1982 - 1988\)](#)  
[Sixth Legislature \(1987 - 1990\)](#)  
[Fifth Legislature \(1982 - 1987\)](#)

[Standing Orders of the House of Representatives](#)

#### Media Archive

#### Tags

[First Reading](#)  
[Amendment](#)  
[L-Event Call](#)  
[Jury](#)  
[Marriage](#)

## Motion No. 9

Marriage Bill and other Laws (Amendment) Bill - First Reading



[Download the Document](#)

<b>Notice given on</b>	Saturday, 24 June 2017
<b>Presented by</b>	Minister for European Affairs and Equality Hon. Valerie Ball MP
<b>Debated in</b>	Order No. 1 - Saturday, 24 June 2017 Plenary Session
<b>Bill</b>	1 - Marriage Bill and other Laws (Amendment) Bill
<b>Act</b>	Bill of 2017 - Marriage Act and other Laws (Amendment) Act



9. Il-Ministru għall-Affarijiet Ewropej u Ugwaljanza, l-Onor. Helena Dalli, tproponi:

L-Ewnej Qari tal-Abbozz ta' Ligi meqjula "At tal-2017 li jemenda l-At dwar iż-Żwieg u Ligijsi Oħra."

24.06.17.



## Committee debate

<https://parlament.mt/en/13th-leg/consideration-of-bills-committee/kun-001-06072017-0100-pm/>



**MALTA**

**217 No. 2288 of 2017**

217 (Maltese) is hereby proclaimed as  
Law.

217 (Maltese) provides for the setting  
up of the Malta Occupational and  
Technological Training Board and  
for related matters. It also provides  
for the appointment of members of  
the Board.

**217 No. 2289 of 2017**

217 (Maltese) is hereby proclaimed as  
Law.

217 (Maltese) provides for the setting  
up of the Malta Occupational and  
Technological Training Board and  
for related matters. It also provides  
for the appointment of members of  
the Board.





De mawle was wawakale (i) nghe, ghele  
 jaha's wawakale ghe' i gy

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"De mawle was wawakale (i) nghe, ghele  
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188. Mawle was wawakale (i) nghe, ghele  
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189. Mawle was wawakale (i) nghe, ghele  
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#### Section 10

Section 10: Mawle was wawakale (i) nghe, ghele

190. Mawle was wawakale (i) nghe, ghele  
 jaha's wawakale ghe' i gy

191. Mawle was wawakale (i) nghe, ghele  
 jaha's wawakale ghe' i gy

1999

(S.4)

MAKING  
 AVAILABLE FOR  
 THE PUBLIC

1999

**ACT No. 2000-0107**

**ACT No. 2000-0107 (Department of 2000)**

ACT No. 2000-0107 (Department of 2000) is intended to amend the Insurance Act and various other laws in connection with the introduction of savings deposits and to provide for other matters arising out of or incidental thereto.

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in the presence and hearing of the Senate, and by the public of the same, as follows:

**ARRANGEMENT OF THE ACT**

Article

Part 1	Insurance	1
Part 2	Department of the General Bank	1-17
Part 3	Department of the Office of Supervisors and Third Parties	18-27
Part 4	Department of the Office of the Registrar	28-30
Part 5	Department of the Department of 2000	31-32
Part 6	Department of the Department of 2000	33-34
Part 7	Department of the Office of the Registrar	35-36



(2) the term "area" during the construction of paragraph 1 shall include the portion of the system, in any case, in which the units comprising such system, if previously owned, used or defined with a right of title passed for other uses."

**SEC. 2117.** The terms "S.S.R.," "S.S." and "S" in Part 2 of the First Schedule to the Code shall be substituted by the terms found in the Schedule to this Act.

**SEC. 2118.** The title of Item 1 commencing Part 2 of the First Schedule to the Code shall be substituted by the following:

"REGISTRATION OF A SPECIAL APPLICATION UNDER AUTHORITY OF THE GOVT. OF WEST BENGAL UNDER CERTAIN CIRCUMSTANCES."

**Part 4**

**Amendment of the Government Act**

**SEC. 2119.** This Part amends the Government Act, and it shall be read and construed in conformity with the Government Act, hereinafter in this Part referred to as "the principal Act."

**SEC. 2120.** Section 4 of the principal Act shall be amended as follows:

(a) paragraph (a) and (b) thereof shall be reworded as paragraphs (a) and (b) respectively;

(b) in paragraph (b) thereof immediately after the word "therein" there shall be added the words "and words appearing in brackets and underlined" and;

(c) immediately after paragraph (b) thereof there shall be added the following new paragraph:

"(c) the words 'owner' and 'holder' and 'officer' shall be construed as referring to a person if either he or she has contractual dealings in connection with the Storage Act."

**Part 5**

**Amendment of the Storage Act**

**SEC. 2121.** This Part amends the Storage Act, and it shall be read and construed in conformity with the Storage Act, hereinafter in this Part referred to as "the principal Act."

186. In the definition of the word "Signature" in article 1 of the principal Act immediately after the words "of a Local Council" there shall be inserted the words "or any person who has been authorized as a continuant of such message for the Public Register"

amendment  
 section 186  
 clause 1

187. In article 1 of the principal Act, for the word "printed" there shall be substituted the word "printed"

amendment  
 section 187  
 clause 1

188. Sub-paragraph (2) of article 1 of the principal Act shall be amended as follows:

amendment  
 section 188  
 clause 1

(a) in paragraph (b) thereof the words "a printer and a copy" there shall be substituted the word "design"; and

(b) in paragraph (c) thereof for the words "printed or copy" there shall be substituted the word "copy"

189. In sub-paragraph (1) of article 1 of the principal Act for the words "of the letter and the name and address of the writer" there shall be substituted the words "and address of the printer"

amendment  
 section 189  
 clause 1

190. In sub-paragraph (2) of article 11 of the principal Act immediately after the words "commenced after a trial there" there shall be added the words "between two competing candidates"

amendment  
 section 190  
 clause 1

191. Article 11 of the principal Act shall be amended as follows:

amendment  
 section 191  
 clause 1

(a) sub-paragraph (2) thereof shall be amended to the following:

"(2) During the campaign, the Registrar or other officiating officer in charge of taking the message shall give each and each of the persons to be named, that to one of them and then to the other, whether that person will take the other as such person's opponent, and upon the declaration of each of such persons for one or both candidates without any condition or justification, the Registrar or other officiating officer shall declare them to be named;"

(b) immediately after sub-paragraph (1) thereof, there shall be added the following new sub-paragraph:

"(3) Without prejudice to the provisions of sub-paragraph (2) the person to be named may declare to the Registrar or other officiating officer in charge of taking the message when given the name of another which will be used during the campaign, including any message, name or name."

Article 10

Provided that the persons to be accepted must fulfil such requirements as may be determined by the State of the nationality.

Article 11

99. Amendments after article 10 of the present Convention shall be subject to the following provisions:

1. The

(1) The following amendments to the Convention shall be considered as proposed by officials of a competent body or bodies in accordance with article 10 of the Convention unless it appears from the context that it was proposed by the competent body of which the official is a member.

Article 12

100. Article 11 of the present Convention shall be amended as follows:

(a) in the second part of the first sentence: "and shall be submitted to the State of the nationality of the applicant."

(b) the words "in the case of a foreign court" shall be substituted with the words "where possible to the satisfaction of the competent authorities having the function of the State of the nationality of the applicant or a foreign court or a foreign or other official or an executive officer of a foreign organization;" and

(c) the words "of the State of origin" shall be substituted with the words "of the State of origin or of the other official or a court or a court or a competent authority."

Part IV

Members of the Court of Appeal

Article 13

101. The first paragraph of Article 13 of the Convention shall be read and interpreted as follows: "The Court of Appeal shall be composed of members of the Court of Appeal."

Article 14

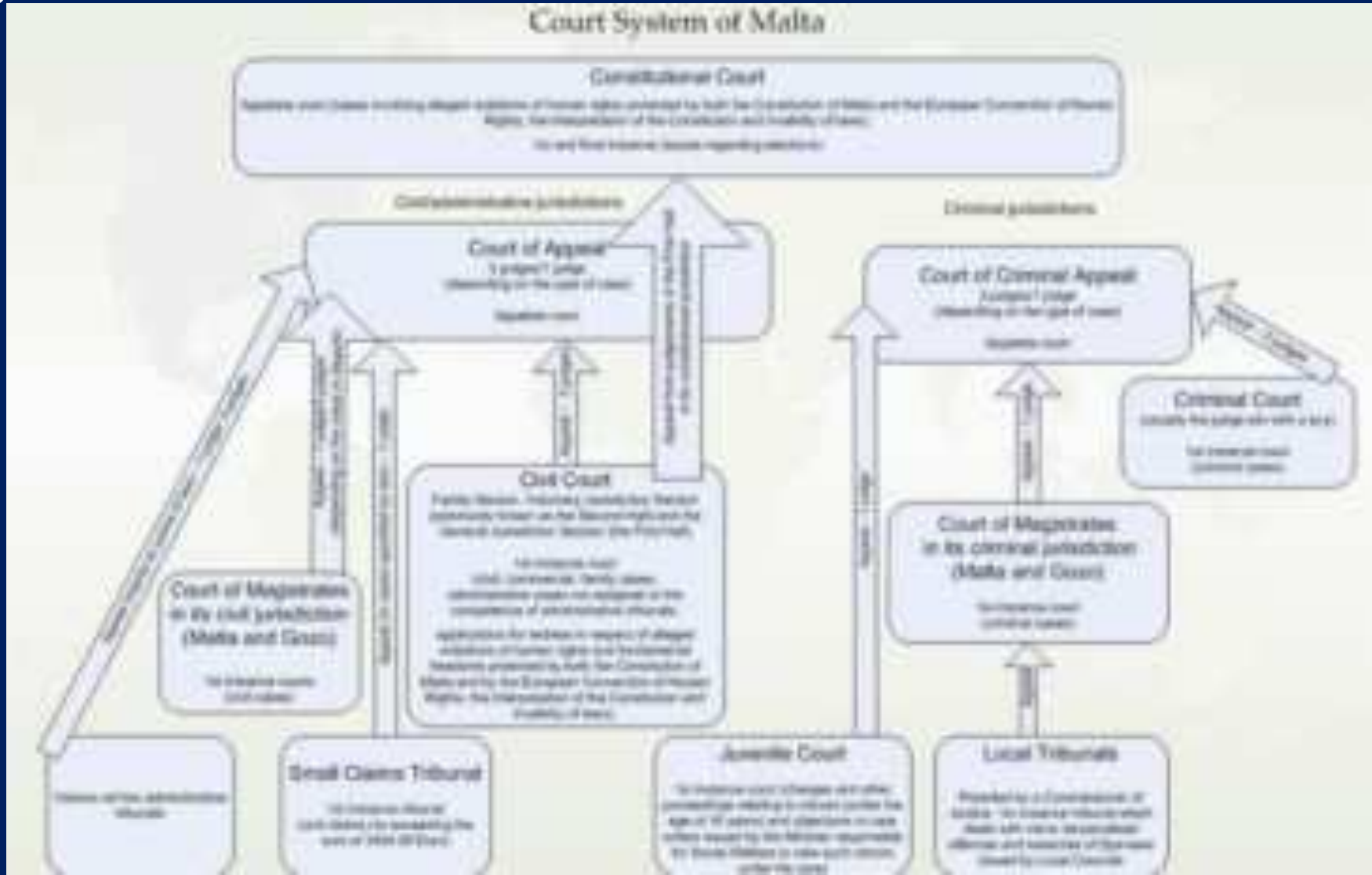
102. Amendments after article 13 of the present Convention shall be

# Who carries out legal research? – Judges, Magistrates and decision makers

- Chief Justice + 28 Judges
- 29 Magistrates
- Both appointed by the president
- Judge/magistrates/ umpire (adjudicators), chairpersons on boards and tribunals
- Must be aware of principles and latest laws
- Has to provide reasons why he is applying a particular law
- Expected to make a true interpretation of the law
- In Malta judges and magistrates are aided by court attorneys and judicial assistants for research and collection of evidence
- Will have to look into the laws that the court he presides over has jurisdiction e.g. Constitutional, rent, property rights matters
- Cannot exceed the competence given by law e.g. In money claims



# Who carries out legal research? – Judges, Magistrates and decision makers



# Who carries out legal research? – Judges, Magistrates and decision makers

List of Tribunals in Malta – not exhaustive

- Police Licenses Appeals Tribunal
- Prison Appeals Tribunal
- Building and Construction Tribunal
- International Protection Appeals Tribunal
- Industrial Tribunal
- Arbiter & Patents Tribunal
- Administrative Review Tribunal
- Information and Data Protection Appeals Tribunal
- Partition of Inheritances Tribunal
- Small Claims Tribunal
- Environment and Planning Review Tribunal
- Commercial Sanctions Tribunal
- Financial Services Tribunal
- Consumer Claims Tribunal



# Who carries out legal research? - Lawyers

- Wrong advice might derail client
- Consequences re liability and professional indemnity insurance
- Responsibility – institute a case? Appeal or not? File a garnishee order? Expose client to retaliation with another garnishee? Penalty for frivolous garnishee? Court fees, Kawtela etc
- Similar to the judge must keep up with law introductions and amendments and case law
- Interpretation of the law - must look into the nitty gritty of the law/case especially if the facts are against his clients
- If lawyer is limited to certain areas e.g. Tort law – thorough legal research is not needed



# Who carries out legal research? - Lawyers

- Note of submissions/ observations – Legal briefs
- Requirements of the acts e.g. Warning in 166A letter or sworn application
- Research is required to provide a good advice
- Procedural and Substantive law
- What to do in grey areas?





# Who carries out legal research? – Lecturers and students

- Lecturers need to do legal research as part of their professional commitment especially if they are teaching procedural or substantive law
- Needs to keep track of developments
- Students – for performing assignments/ tasks assigned. It is the practice stage if one will pursue a career in the legal field – not necessarily as a lawyer, paralegal but even as a court official – same applies for professionals working in the legal field





Happy Planning - Malta (The Happier Children)  
[www.happyplanningmalta.com](http://www.happyplanningmalta.com)  
 24941000 1144

**2022 Proposal for a Directive on amendments to the Law and Improvement to the Family Court procedures.**

**by Dr Ivan Sammut**

Dr Ivan Sammut, Deputy Dean of the Faculty of Law, University of Malta, strongly believes that the Family Court needs urgent amendment and updating to continue serving the needs of Maltese people. Many parents in Malta may bring together the various systems, and many times they have to report to the Courts. The two most common issues that arise concern maintenance and access to children. It results, judging from the various experiences of Maltese citizens in countries that the Maltese law is not equipped enough to deal with the type of cases where very small and young children become

Let us take as an example a case in the field of parental alienation, where a parent denies the other parent access to their children for an extended period. Lawyers involved in cases that concern children behave as if they are dealing with the cases that involve the partition of property.

**Proposal for a long term solution**

HMJMSU is proposing the setting up of an authority or agency whose task will be to monitor such cases and to determine whether proceedings should be granted or not. It will also determine whether child protection is feasible and if not, the viability of the cases to return that should be given. This of course, may well be able to apply the very urgent changes



with that will be conducted regularly by the Family Court on issues of rights of their own terms and conditions.

To understand the concept more clearly, you can draw a comparison with the Planning Authority. This body has all the resources required to create a planning policy of his national experts in the field. It is more accessible to the public and operates under the supervision of the Courts whenever this is required. In the same way that the authority has building engineers, family "engineers" should run the proposed agency. This idea has not been accepted by the HMJMSU, but is based on the situation observed including in the United Kingdom.

**Proposals that can be implemented immediately:**

Since the above proposal is somewhat ambitious and, apart from a new legal framework, it requires considerable training, HMJMSU is making further proposals, some of which can be immediately implemented:

**1. An improved certification system in the Family Court**

It is necessary to strengthen and improve how the Family Court issues certifications. There should be wider use of electronic means to deliver certifications efficiently.

**2. A reform in the composition of the Family Court**

This should provide strengthening the Family Court, and this Court should be presided over by a judge and two family experts, such as a psychologist and a therapist. This should apply to divorce, co-ownership, custody and child maintenance. The judge would focus on legal issues while the rest take place as a discussion. It would be a good idea to establish a Board made up of two psychologists, specializing in children and parental alienation, and a lawyer. This Board





would study cases such as those of separation, where minor children are involved before they come on to litigation in Court, and within these courts make recommendations on the type of arrangement that would be suitable. Where this is not possible, appropriate courts and mechanisms would be established according to each case in particular.

This would also place in an immediate position that would enable the parents to reach an agreement.

**5. The strengthening of the Child Protection Services to enable them to intervene in the Courts:**

Knowledge and experience in the field of children are found in the officers working for this department, which was created for this purpose. Not all lawyers or judges would have worked and specialised in children. As a result, the need for Child Protection arises.

**6. The enactment of a law dealing with the interests of children that recognise in them more the interests of parental absence:**

The concept of parental absence should be recognised in civil and criminal law, as is happening in various European countries and globally. Thanks to Civil Law, adapted to cases arising in contemporary society, applicable solutions can be taken so that children are not cut off completely from the parental parent. A serious and comprehensive study of a case and its various elements, may enable the designation of suitable access to the two parents or shared arrangements will most conducive to the welfare of the children.



**7. A reform in the Criminal Code Article 137 LL, in order to children and Article 138 of an establishment:**

Parents should ensure that legal representation available in the European States Higher Commission, the example provided access should be accompanied by quality care with children. Regarding maintenance, the court should make sure to all the parties involved in the case. Decisions on child arrangements should be assessed, both from access as well as from maintenance, to prevent them from being used as a mechanism of litigation aimed at a solution.

**8. The Law affecting children should uphold a general clause that the equal sharing of the raising of children is to be seriously considered:**

Although the present legal provisions do not include this, there need to be legal interventions to change the current mentality, usually concentration of the judiciary and the legal profession. We need to ensure that with the law making with all the efforts of the results of time. Consequently society no longer continues the roles of yesterday.

In the case of an amicable separation, the role should be that the care and custody of children would be amicablely arranged, without economic considerations, with medical and education expenses would be equally shared by the parents. It should be one of the parents who may require contribution to the arrangement. This could become an agreement a paper is drawn by the experts. It should be the Court that enables the custody and time division arrangements, according to the needs and wishes of the parent in the case may be.

This means that, where there is a child access established following an analysis, children could spend 50% of their time with either parent and for



parents would be financially responsible during that time. In the case of a child custody arrangement, assessment would not be required. In this way, equality would be established between the parents. As things now stand, the Courts generally provide guidelines automatically to the mother and order her to follow a pay arrangement.

### 7. Request for an improvement to the administration of family procedures

This would include the provision that the collection of evidence should not be done by practicing lawyers. They would be officials who are directly engaged by the Courts and who are accountable directly to the Courts. Practising judicial officers may have a conflict of interest, affecting their objective and impartiality.

It is a good idea for the Court to have a list of experts: doctors, psychologists, psychiatrists, experts in the field of parental alienation, social workers and approved therapists.

The most fair route for the judiciary and the legal profession (judges, advocates and lawyers) is to remain professionally out of cases judgments based on interpreted ideas proving that only the courts have the authority to make decisions. There should be no involvement in parental alienation.

There should be better facilities in a Court where cases are resolved, such as the Family Court. This Court should have a format that is different from the ordinary Courts, and ideally, it should be placed in a separate building. When children give their testimony, there should be transparency, and the parents should also be heard.



### Conclusions

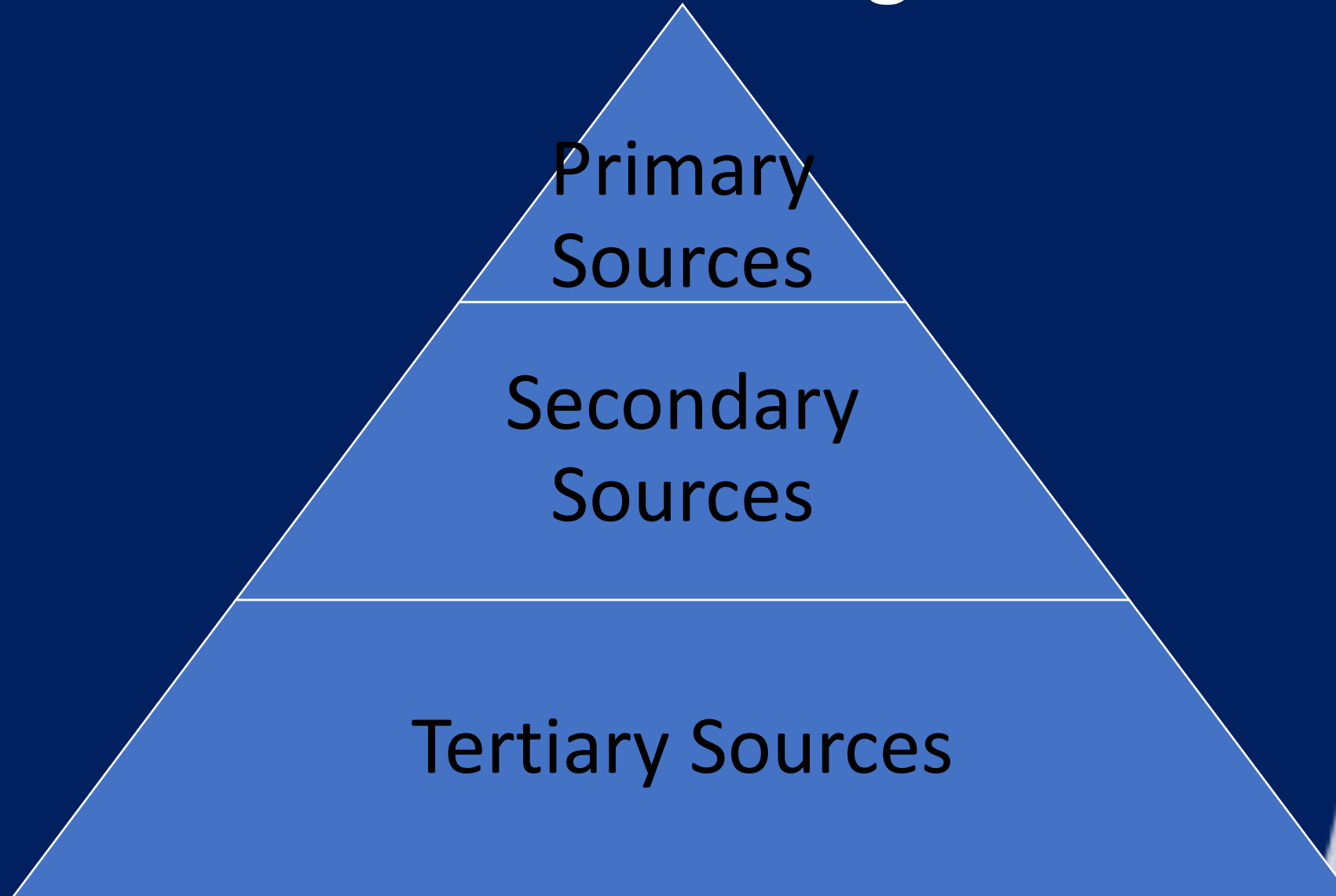
The proposals being made here are among many that are being considered and studied in various other countries. In the same way that we are ready to analyse developments in other areas of society to improve the structure of our country, we need to observe, analyse and study the field properly. Children's lives in the environment of the family - irrespective of whether it is an ideal one or not that leads to great or terrible results in their lives and experiences. We cannot create more than because today's children are the young people of tomorrow and the world guarantees a few years down the line. What happens today reflects on the experiences of the future. They will be responsible for our country's future.



Which are the sources  
of legal research?



# Which are the sources of legal research?



# Which are the sources of legal research?

- Primary sources – written/ codified law - the core of all laws – includes varied forms e.g. S.L. and bye laws and international legislation applicable
- Secondary sources – Material that provides interpretation on primary sources
- Tertiary Source – lists and summarises secondary and primary sources
- Some grey areas and a source might fall in more than one category



# Primary Sources of Legal Research

- Constitution – Cap. 0 – core of all laws. Allows parliament to enact acts of parliament i.e. laws
- Acts of Parliament – acts, subsidiary legislation, L.N, Bye laws
- Subsidiary Legislation – Covers particular areas of the main act e.g. S.L 12.11 – means test to increase rent
- Legal Notices – Similar to bye laws, but not issued by local councils
- Bye Laws – Laws issued by Local Councils for the purpose of carrying out their functions and for the prevention and suppression of nuisances in their locality
- Parliament Bills – Laws which are not yet in force but are at preliminary stage
- Treaties - An international agreement concluded between States in written form and governed by international law. Once ratified they become law. Unless ratified it is not a primary source but secondary
- Custom law (Customs law – taxation of imported goods) – set of rules which have existed since time in memorial and obtained the force of law. Mostly used in commercial and international law e.g the granting of immunity for visiting heads of state.
- Judgments – Malta does not subscribe to the theory of precedent unlike common law. Judgments include ECHR and ECJ judgments
- EU Directives and Regulations

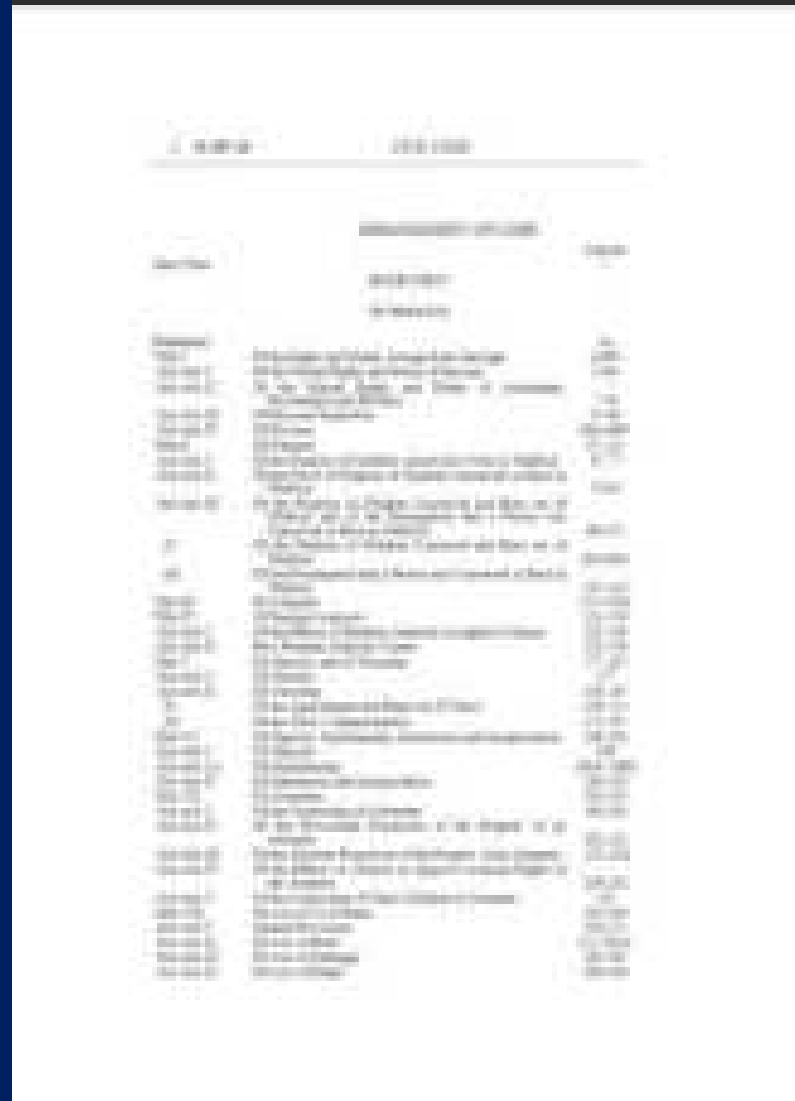




# The Constitution of Malta



# The Civil Code



# Chapter of the laws of Malta and subsidiary legislation

## LATEST UPDATED

- Bye-Laws for the Degree of Master of Arts in Mediterranean Studies - M.A. - under the auspices of the Faculty of Arts
- Bye-Laws in terms of the General Regulations for University Postgraduate Awards, 2021 for the degree of Master of Arts in Baroque Studies - M.A. - under the auspices of the International Institute for Baroque Studies
- Bye-Laws for the Degree of Master of Arts in Global Maritime Archaeology - M.A. - under the auspices of the Faculty of Arts
- Bye-Laws in terms of the General Regulations for University Postgraduate Awards, for the degree of Master of Arts in Health, Medicine and Society - M.A. - under the auspices of the Faculty of Arts
- Bye-Laws for the Degree of Master of Arts in Hospitalier Studies under the auspices of the Faculty of Arts

Chapter	Chapter Title	View
Cap. 16	Civil Code	
S.L. 16:01	Civil Code as at 31st December 2010	
S.L. 16:01	Placing of Minors Regulations Repealed by Act XXXI of 2019	
S.L. 16:02	Duplicate Acts of Civil Status Regulations	
S.L. 16:03	Designation of Officers in relation to Acts of Birth and Acts of Death Order Repealed by Act LXV of 2020	
S.L. 16:04	Adoption Regulations	
S.L. 16:05	Overseas Adoption (Definition) Order	
S.L. 16:06	Interest Rate(Exemption) Regulations	
S.L. 16:07	Civil Code (Second Schedule) (Fees) Regulations	
S.L. 16:08	Civil Code (Second Schedule) (Notifications and Forms) Regulations	
S.L. 16:09	Amalgamation of Organisations Regulations Repealed by Act XXXVI of 2018 - see article 121	
S.L. 16:10	Civil Code (Second Schedule) (Existing Organisations) Regulations	
S.L. 16:11	Continuation of Tenancies (Means Testing Criteria) Regulations	





**Local Government Act**

**LOCAL GOVERNMENT ACT  
(1992)**

**Extent of Powers (Local Councils) (No. 1) Act, 2011**

20. ENACTED in pursuance of section 10 of the Local Government Act, the Local Council Council has made the following By-Laws:

1.1. The title of these By-Laws is the Council of Pajon **Local Council Council (No. 1) Act, 2011**

1.2. These By-Laws shall come into force on 1st month after they published in the Gazette.

1.3. In these By-Laws unless the context otherwise requires:  
 "Act" means the Local Government Act;  
 "Council" means the Local Council Council;

"domestic property" means property which occupies a residential plot or a small other plot for the purpose of domestic, family or other use;

"house" means the whole building as defined in the General Building Act;

"wild property" means property that is not domestic property;

1.4. The binding of wild property by any provision in any part of the Council's by-laws;

1.5. It is also provided by a provision in relation to those plots which are situated in wild property;

1.6. The provisions of this Act have the same effect for those persons occupying or in the use of domestic property;

1.7. The Council of community property within the Council shall ensure that the said property for which it has a consent that it will be used for a purpose other than domestic;

1.8. Any person who fails to comply with any provision of these By-Laws shall be deemed to have committed a contravention and shall, on conviction, be liable to a fine or imprisonment or both.

**Local Council Council**

(a) In a case where there is a local council of any council (1992);

(b) In a case of a community council in a local council (1992) and;

(c) In the case of a community council in a local council of another area (1992) for which the local council has power.

Bye-laws



# Treaties

A tax treaty concluded by Malta becomes law by Ministerial order. The treaty is attached to the Maltese instrument used











# Government Gazette



**Gazzetta tal-Gvern ta' Malta**  
The Malta Government Gazette

Volume 141, Number 101  
Date of Issue: 15th November 2011

**CONTENTS - SUMMARY**

Administrative Notices	1-14
Statutory Notices	15-18
Public Notices	19-20
Private Notices	21-22
Public Notices	23-24
Private Notices	25-26
Public Notices	27-28
Private Notices	29-30
Public Notices	31-32
Private Notices	33-34

Volume 141, Number 101

<b>Administrative Notices</b> No. 101	<b>Administrative Notices</b> No. 102
<b>Statutory Notices</b> No. 103	<b>Statutory Notices</b> No. 104
<b>Public Notices</b> No. 105	<b>Public Notices</b> No. 106
<b>Private Notices</b> No. 107	<b>Private Notices</b> No. 108
<b>Administrative Notices</b> No. 109	<b>Administrative Notices</b> No. 110
<b>Statutory Notices</b> No. 111	<b>Statutory Notices</b> No. 112
<b>Public Notices</b> No. 113	<b>Public Notices</b> No. 114
<b>Private Notices</b> No. 115	<b>Private Notices</b> No. 116
<b>Administrative Notices</b> No. 117	<b>Administrative Notices</b> No. 118
<b>Statutory Notices</b> No. 119	<b>Statutory Notices</b> No. 120
<b>Public Notices</b> No. 121	<b>Public Notices</b> No. 122
<b>Private Notices</b> No. 123	<b>Private Notices</b> No. 124







Where are we  
headed?

What about Artificial  
Intelligence?



# The future of Legal Research – Artificial Intelligence

- A.I has already been introduced in the sphere of legal research. Programs like Westlaw Edge, allow for the uploading of draft arguments. The system analyzes the text and provides further insight by identifying highly relevant authority that may have been missed
- Platforms inform you if a point of law in a case has been overruled
- Some programs are capable of generating insight into patterns in a judge's behavior by analyzing a judge's past rulings - How often does a judge side with a plaintiff? In your specific type of claim? What kind of arguments resonate with your judge? What kinds of authority does the judge prefer?
- This kind of insight is available also on opposing legal representatives. If your opposing counsel or their law firm has any history in the court system, you may be able to get data-driven analytics about them. How much experience does your opposing counsel have on a particular issue? How successful are they on certain types of claims? Do they have any history with your judge?
- Video Westlaw Edge  
<https://www.youtube.com/watch?v=ONhECWOzUds>



## APPLICATIONS OF AI IN THE LAW FIELD

